Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RODRIGO A. UPOD, *Petitioner,* -versus- **ONON TRUCKING AND MARKETING CORPORATION and AIMARDO V. INTERIOR,** *Respondents.*	**G.R. No. 248299** Members: PERLAS-BERNABE, *S.A.J.*, *Chairperson,* LAZARO-JAVIER, LOPEZ, M., ROSARIO, and LOPEZ, J.,* *JJ.* Promulgated: JUL 14 2021

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DECISION

LAZARO-JAVIER, *J.*:

The Case

Petitioner Rodrigo A. Upod[1] assails the dispositions of the Court of Appeals in CA-G.R. SP No. 158220[2] entitled *"Rodrigo A. Upod v. National Labor Relations Commission (3rd Division), Onon Trucking and Marketing Corporation, and Aimardo V. Interior."*

1) ***Decision***[3] dated February 14, 2019 holding that petitioner, as a fixed-term employee, was validly dismissed; and

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* Designated as additional member per Special Order No. 2822 dated April 7, 2021.

1 *Rollo*, pp. 12-30.

2 Penned by Associate Justice Pedro B. Corales, concurred in by Associate Justices Stephen C. Cruz and Rafael Antonio M. Santos.

3 *Rollo*, pp. 33-45.

2) ***Resolution***[4] dated July 10, 2019 denying petitioner's motion for reconsideration.

Antecedents

By Complaint[5] dated May 19, 2017, petitioner sued respondent Onon Trucking and Marketing Corporation (Onon Trucking), and Aimardo V. Interior (Interior) for illegal dismissal with money claims.[6] He essentially alleged:

Respondent Onon Trucking hired him way back in April 2004 as hauler/driver. His tasks consisted mainly of travelling to the manufacturing plant of San Miguel Brewery, Inc. in San Fernando, Pampanga to withdraw stocks for piling and distribution to different grocery stores. He was paid on a "per trip" basis. He was affiliated with respondent until 2009 when he got suspended on ground of alleged abandonment. Respondent company rehired him come 2014. Since then, he peacefully and continuously reported for work until February 2017 when he was no longer given any delivery assignment. He, nonetheless, continued maintaining the hauling trucks for a few days. Thereafter, he decided to leave and file the present suit because he realized that his continuous employment was no longer possible.

He claimed that he was not given the benefits due a regular employee, *i.e.*, SSS, PhilHealth, and Pag-Ibig despite having rendered service for more than a year already.

Respondent company,[7] on the other hand, denied the supposed employer-employee relationship with petitioner and asserted there could be no illegal dismissal to speak of since petitioner was never its employee. It countered that respondent Interior was the owner of Onon Trucking, an entity engaged in wholesale and retail of products. It hired independent freelance drivers like petitioner to transport supplies to its clients. It paid the drivers on per delivery basis which in petitioner's case was sixteen percent (16%) of the gross revenue per trip. Petitioner's engagement ended without further notice, upon delivery of the supplies or upon his return to the warehouse whichever came first.

Ruling of the Labor Arbiter

By Decision[8] dated February 28, 2018, Labor Arbiter Ma. Lourdes R. Baricaua (Labor Arbiter Baricaua) declared petitioner as respondent company's regular employee, *viz.*:

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4 *Id.* at 47-48.
5 *Id.* at 85-86.
6 Non-membership in SSS, PhilHealth, and Pag-Ibig and non-payment of 13th month pay.
7 *Rollo*, pp. 94-100
8 *Id.* at 120-124.

> **WHEREFORE,** in view of the foregoing, **JUDGMENT** is hereby rendered declaring that complainant is a regular employee of respondents and that he was illegally dismissed. Consequently, respondent **ONON TRUCKING and MARKETING and/or AIMARDO V. INTERIOR** are hereby **ORDERED** to pay complainant **RODRIGO A. UPOD,** within ten (10) calendar days from receipt hereof, the sum of **ONE HUNDRED SIXTY NINE THOUSAND FOUR HUNDRED PESOS (P169,400.00),** Philippine Currency, representing separation pay, 13th month pay and attorney's fees.
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> All other claims are hereby **DISMISSED** for lack of jurisdiction.
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> **SO ORDERED.**[9]

The labor arbiter held that all the elements of employer-employee relationship are present in this case:

One. Respondent company hired petitioner as driver to transport its goods to different parts of Luzon.

Two. Respondent company paid petitioner on per trip basis.

Three. Respondent company's power to dismiss petitioner was inherently included in its power to engage the latter as its employee.

Four. Petitioner performed his tasks as truck driver under respondent company's supervision and control. Thus, it was respondent company which determined petitioner's route for the areas of delivery.

The labor arbiter granted petitioner's prayer for separation pay, 13th month pay, and attorney's fees but denied his claim for non-membership with the SSS, Philhealth, and Pag-Ibig. According to the labor arbiter, these claims should be lodged with the proper forum.

Ruling of the National Labor Relations Commission (NLRC)

Under its Decision[10] dated June 26, 2018, the NLRC reversed. It held that petitioner did not adduce evidence to prove his supposed employment with respondent company. On the contrary, the terms of the per trip contract were clear – the engagement ended upon completion of petitioner's delivery of the goods or his return to the warehouse whichever came earlier. The limited engagement of petitioner's services – two to three (2-3) times per week also weighed heavily against petitioner's claim of employment with respondent company. Absent any employer-employee relationship between petitioner and respondent company, there could be no illegal dismissal to speak of.

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9 *Id.* at 124.

10 *Id.* at 72-79.

Petitioner's motion for reconsideration got denied per Resolution[11] dated August 28, 2018.

Proceedings before the Court of Appeals

Petitioner[12] charged the NLRC with grave abuse of discretion for holding that there was no employer-employee relationship between him and respondent company. He claimed to have attained regular employment status following the four-fold test, as found by Labor Arbiter Baricaua. As a regular employee, he could only be terminated on just or authorized causes, subject to his right to due process.

Respondent company[13] reiterated that it did not have any employment relationship with petitioner and essentially defended the NLRC's dispositions.

Ruling of the Court of Appeals

Through its assailed Decision[14] dated February 14, 2019, the appellate court modified. While it agreed with the labor arbiter that there was indeed an employer-employee relationship between the parties, it nevertheless refused to pronounce that the NLRC gravely abused its discretion when it held that petitioner was not illegally dismissed. On the contrary, it held that petitioner, as a fixed-term employee of respondent company, was validly dismissed. Petitioner voluntarily signed the per trip contract such that the engagement ended upon his delivery of the goods or his return to the warehouse whichever came first, without need of further notice.

Petitioner's motion for reconsideration was denied under Resolution[15] dated July 10, 2019.

The Present Petition

Petitioner[16] now seeks the Court's discretionary appellate jurisdiction to grant him affirmative relief from the assailed dispositions of the Court of Appeals. He asserts that he was in fact a regular employee of respondent company, having performed acts necessary and desirable to the latter's business or trade for more than a year. His employment with respondent company, therefore, may not be terminated by the mere lapse of the period stated in the contract. Respondent company's failure to comply with both substantive and procedural due process rendered his dismissal illegal. He prays for payment of his money claims and separation pay, in *lieu* of reinstatement.

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11 *Id.* at 81-83.
12 *Id.* at 50-69.
13 *Id.* at 152-159.
14 *Id.* at 33-45.
15 *Id.* at 47-48.
16 *Id.* at 12-30.

In its Comment,[17] respondent company prays for the outright dismissal of the petition since it raises factual issues beyond the Court's power of review under Rule 45 of the Rules of Court.

Ruling

The petition is meritorious.

At the outset, the Court notes that the issue presented for resolution – whether there exists an employer-employee relationship between the parties – is ultimately a question of fact.[18] As a general rule, however, a petition for review on *certiorari* under Rule 45 of the Rules of Court may only raise questions of law. For the Court is not duty-bound to analyze anew and weigh again the evidence introduced in the proceedings below and considered by the administrative tribunals.[19]

The rule, nevertheless, allows for exceptions. One is when the findings of fact of the trial court or quasi-judicial agencies concerned are conflicting with those of the Court of Appeals. When there is a variance in their factual findings, as in this case, it is incumbent upon the Court to examine the facts once again,[20] as we do here and now.

Petitioner sufficiently established employment relationship with respondent company.

Before the Court could rule on illegal termination cases, the employee must first establish his or her employment relationship with the employer. The court ascertains whether the employee was able to discharge this burden by taking into account the determinative factors of employment under the four-fold test: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct.[21]

The elements are all present here.

One. Respondent company hired petitioner as hauler/driver. Except for the interruption in petitioner's service from 2009 until 2014, he had been with respondent company since 2004 until 2017 or for about eight (8) years already.

Two. Respondent company paid petitioner 16% of gross revenues per trip. The fact that petitioner was paid on per trip basis does not negate the existence of an employer-employee relationship; for the same is simply a method for computing compensation. One may be paid on the basis of results or time expended on the work, and may or may not acquire an employment

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17 *Id.* at 178-181.
18 See *Atok Big Wedge Company, Inc. v. Gison*, 670 Phil. 615, 626 (2011).
19 See *Heirs of Ferraren v. Court of Appeals*, 674 Phil. 358, 365 (2011).
20 See *General Milling Corp. v. Viajar*, 702 Phil. 532, 540 (2013).
21 See *Philippine Global Communications, Inc. v. De Vera*, 498 Phil. 301, 308-309 (2005).

status, depending on the presence or absence of the elements of an employer-employee relationship.[22]

Three. Respondent company's power to hire included its inherent power to discipline petitioner.[23]

Four. Respondent company exercised the power of control over petitioner's performance of his task. For one, the truck which petitioner operated was owned by respondent Onon Trucking. For another, respondent company specifically defined petitioner's route for every delivery, *e.g.*, Tuguegarao City, Cagayan to San Fernando, Pampanga.

In ***Chavez v. National Labor Relations Commission***,[24] the Court declared Chavez a regular employee despite having been engaged and paid on a per trip basis. The Court found that respondents engaged Chavez' services without the intervention of a third party; Chavez received compensation from respondent company for the services he rendered to the latter; respondents' power to dismiss was inherently included in their power to engage the services of petitioner as truck driver; and respondents' right of control was manifested by the following attendant circumstances:

> 1. The truck driven by the petitioner belonged to respondent company;
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> 2. There was an express instruction from the respondents that the truck shall be used exclusively to deliver respondent company's goods;
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> 3. Respondents directed the petitioner, after completion of each delivery, to park the truck in either of two specific places only, to wit: at its office in Metro Manila at 2320 Osmeña Street, Makati City or at BEPZ, Mariveles, Bataan; and
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> 4. Respondents determined how, where, and when the petitioner would perform his task by issuing to him gate passes and routing slips.
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> > a. The routing slips indicated on the column REMARKS, the chronological order and priority of delivery such as 1st drop, 2nd drop, 3rd drop, *etc*. This meant that the petitioner had to deliver the same according to the order of priority indicated therein.
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> > b. The routing slips, likewise, showed whether the goods were to be delivered urgently or not by the word RUSH printed thereon.
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> > c. The routing slips also indicated the exact time as to when the goods were to be delivered to the customers as, for example, the words "tomorrow morning" was written on slip no. 2776.[25]

So must it be.

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22 See *Chavez v. NLRC*, 489 Phil. 444, 457 (2005).
23 See *Felicilda v. Ufc*, 795 Phil. 408, 415-416 (2016).
24 489 Phil. 444-462 (2005)
25 *Id.* at 458-459.

Petitioner attained regular status of employment with respondent company, albeit he was later on illegally dismissed

We now determine the status of petitioner's employment. The lower tribunals never really agreed on this point. For one, the labor arbiter ruled that petitioner was a regular employee. For another, the NLRC reached a totally different conclusion – that petitioner was not able to establish his employment with respondent company. Still another, the Court of Appeals held that petitioner was a fixed term employee such that there could be no illegal dismissal to speak of when petitioner's engagement expired.

We reinstate the findings of the labor arbiter.

Article 295 of the Labor Code provides:

> **ARTICLE 295.** [280] *Regular and Casual Employment.* — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.[26]

A regular employee, therefore, is one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; or (2) a casual employee who has rendered at least one (1) year of service, whether continuous or broken, with respect to the activity in which he or she is employed.[27]

As an entity engaged in the wholesale and retail of various products, respondent company must necessarily engage the services of delivery drivers, such as herein petitioner, for the purpose of getting its products delivered to its clients. To be sure, since petitioner had performed acts necessary and desirable to respondent company's business and trade for more than a year, his status had already ripened to a regular employment.

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[26] See Labor Code of the Philippines, Presidential Decree (P.D.) No. 442, as amended and renumbered pursuant to Department of Labor and Employment (DOLE) Department Advisory (D.A.) No. 1, series of 2015, July 21, 2015.

[27] See *Geraldo v. The Bill Sender Corp.*, G.R. No. 222219, October 3, 2018.

In ***Cielo v. National Labor Relations Commission***,[28] therein petitioner was declared a regular employee of the private respondent which was engaged in the trucking business as a hauler of cattle, crops, and other cargo for the Philippine Packing Corporation. Private respondent's business, according to the Court, required the services of drivers continuously because the work was not seasonal, nor limited to a single undertaking or operation. Since Cielo had already completed more than six (6) months of service with the trucking company, he was deemed to have already acquired the status of a regular employee at the time of his dismissal.[29]

In the case of petitioner here, he had already been in the service of respondent company continuously for eight (8) years before he got dismissed.

To be valid, petitioner's dismissal should have been for just or authorized causes and only upon compliance with procedural due process. As it was, respondent company complied with neither conditions in effecting petitioner's dismissal. It just abruptly stopped giving delivery assignment to petitioner in February 2017. Petitioner need not even prove the fact of his dismissal in view of respondent company's admission that it stopped giving assignment to petitioner because allegedly, his contract already expired.

Monetary Awards

Article 279[30] (now Article 294) of the Labor Code mandates that an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges, full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.[31] Where reinstatement is no longer viable as an option,[32] or when the dismissed employee opted not to be reinstated,[33] as in here, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. Payment of separation pay is in addition to payment of backwages.[34]

Verily, petitioner is entitled to backwages reckoned from February 2017 until finality of this Decision. As for his separation pay in *lieu* of reinstatement, he is also entitled to one (1) month salary for every year of service[35] reckoned from the year 2014 when he was hired anew as driver until

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28 271 Phil. 433-444 (1991).

29 *Id.* at 441-443.

30 **ARTICLE 294.** [279] *Security of Tenure* — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Labor Code of the Philippines, P.D. No. 442, as amended and renumbered pursuant to DOLE D.A. No. 1, series of 2015, July 21, 2015)

31 See *Noblado v. Alfonso*, 773 Phil. 271, 286 (2015).

32 See *Moll v. Convergys Philippines, Inc.*, G.R. No. 253715, April 28, 2021.

33 See *Claudia's Kitchen, Inc. v. Tanguin*, 811 Phil. 784, 799 (2017).

34 See *Moll v. Convergys Philippines, Inc.*, G.R. No. 253715, April 28, 2021.

35 *Id.*

finality of this decision. Further, he is entitled to payment of his 13th month pay. Meanwhile, the labor arbiter correctly limited petitioner's monetary award to three (3) years pursuant to Article 306 of the Labor Code.[36]

As for respondent company's purported failure to pay petitioner's SSS, PhilHealth, and Pag-Ibig benefits, the labor arbiter correctly declined jurisdiction over the same. For the exclusive and original jurisdiction of labor arbiters[37] does not include non-payment of these benefits. A separate complaint or complaints, ought to be filed with the proper agencies concerned.

As for the award of attorney's fees, the same is proper since petitioner was compelled to litigate to protect his right.[38]

The monetary awards shall earn six percent (6%) legal interest *per annum* from finality of this decision until fully paid.[39]

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[36] **ARTICLE 306.** [291] *Money Claims.* — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

All money claims accruing prior to the effectivity of this Code shall be filed with the appropriate entities established under this Code within one (1) year from the date of effectivity, and shall be processed or determined in accordance with the implementing rules and regulations of the Code; otherwise, they shall be forever barred.

Workmen's compensation claims accruing prior to the effectivity of this Code and during the period from November 1, 1974 up to December 31, 1974, shall be filed with the appropriate regional offices of the Department of Labor not later than March 31, 1975; otherwise, they shall forever be barred. The claims shall be processed and adjudicated in accordance with the law and rules at the time their causes of action accrued. (Labor Code of the Philippines, P.D. No. 442, as amended and renumbered pursuant to DOLE D.A. No. 1, series of 2015, July 21, 2015)

[37] **ARTICLE 224.** [217] *Jurisdiction of the Labor Arbiters and the Commission.* — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

(1) Unfair labor practice cases;
(2) Termination disputes;
(3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
(4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
(5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
(6) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements. (Labor Code of the Philippines, P.D. No. 442, as amended and renumbered pursuant to DOLE D.A. No. 1, series of 2015, July 21, 2015)

[38] See *Ador v. Jamila and Company Security Services, Inc.*, G.R. No. 245422, July 7, 2020.

[39] See *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013).

Finally, the Court finds that respondent Onon Trucking should be solely liable for the monetary awards here. A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Thus, as a general rule, an officer may not be held liable for the corporation's labor obligations unless he or she acted with evident malice and/or bad faith in dismissing an employee.[40] Consequently, in the absence of any showing here that respondent Interior acted with malice or bad faith in effecting petitioner's dismissal, he cannot be made solidarliy liable with respondent Onon Trucking for the payment of the monetary award to petitioner.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated February 14, 2019 and Resolution dated July 10, 2019 of the Court of Appeals in CA-G.R. SP No. 158220, are **REVERSED and SET ASIDE.** Petitioner **RODRIGO A. UPOD** is declared **ILLEGALLY DISMISSED** and respondent **ONON TRUCKING AND MARKETING CORPORATION** is **ORDERED** to **PAY** him:

1) **BACKWAGES** reckoned from February 2017 until finality of this Decision;
2) **SEPARATION PAY** equivalent to one (1) month salary for every year of service reckoned from 2014 until finality of this Decision;
3) **13th MONTH PAY** limited to three (3) years prior to the filing of the complaint; and
4) Ten percent (10%) **ATTORNEY'S FEES**.

These monetary awards shall earn six percent (6%) legal interest *per annum* from finality of this Decision until fully paid.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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[40] See *Moll v. Convergys Philippines, Inc.*, G.R. No. 253715, April 28, 2021.

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice